03/002/07/TN 13

POMS

PROGRAM OPERATIONS MANUAL SYSTEM

Part 03

Retirement and Survivors

CHAPTER 002

Benefits and Payments

SUBCHAPTER 07

Widow(er)'s Benefits

This consolidation incorporates up to transmittal 13

U.S. Department of
Health and Human Services
Social Security Administration
Office of Policy
SSA Pub. No. 68-0300207
ICN 991941
FEBRUARY 1989

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Check List of POMS Transmittals Received

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8.			44.			80.			116.		
9.			45.			81.			117.		
10.			46.			82.			118.		
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13.			49.			85.			121.		
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29.			65.			101.			137.		
30.			66.			102.			138.		
31.			67.			103.			139.		
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Subchapter 07—Widow(er)'s Benefits

Claims Manual (CM) Reference	*POMS Reference*
400, 450	RS 00207.010
401	RS 00207.040
402, 451	RS 00207.020
403, 452	RS 00207.030
404	RS 00207.050
405, 453	RS 00207.060
407, 455	RS 00207.070
408, 456	RS 00207.100
411, 457	RS 00207.110
412, 458	RS 00207.120
414, 459	RS 00207.130
415	RS 00207.140
416	RS 00207.150
416.5	RS 00207.160
417, 460	RS 00207.170
420, 465	RS 00207.200
429	RS 00207.210
430	RS 00207.300
430.5	RS 00207.310
431	RS 00207.320
432	RS 00207.330
433	RS 00207.340
434, 470	RS 00207.350
437	RS 00207.360
438	RS 00207.370
439, 471	RS 00207.380
440, 472	RS 00207.400
441	RS 00207.410
442	RS 00207.420
443	RS 00207.430
444	RS 00207.440
445	RS 00207.450
446	RS 00207.460
447	RS 00207.470
448	RS 00207.480
449	RS 00207.490
449.5	RS 00207.495
454	RS 00207.065
469	Obsolete
A401-A402	RS 00207.040
A403	RS 00207.120
A405	RS 00207.050 B.
T400-T401	Obsolete
T470-T484	RS 00207.050 A.
6075	RS 00207.070
6075	RS 00207.400
6076	RS 00207.070
6078	RS 00207.070
6079	RS 00207.070 C.
6080	RS 00207.070 D.
6081	RS 00207.070 E.
6082	RS 00207.070 F.

00207.000 Widow(er)'s Benefits

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Widow(er)'s Benefits

NOTE: *The Audience for the material in this subchapter is the same: BO/DO/TSC-CR—CR TII, DRT, FR, OA, OS, RR, SR, TSC-SR, TT; PSC—ADS, CA, CCRE, CRTA, ICDS, IES, ILPDS, IPDS, ISRA, RECONR, RECOVR; ODO—CA, CATA, IS, RECONR; INTPSC—CA, CATA, CC, CDA, CIES, RECONR*

Act—Secs. 202(e), (f), (k), (q); 203(c), (f); 216(c), (d), (g), (h), (k); 222(b); 223(d); 225; 226(b); 227

Regulations No. 4—Secs. 404.335-404.338; 404.345-404.347;

Regulations No. 5—Sec. 405.102(c).

Definitions and Requirements

00207.010 Widow(er) Defined

A. General

The Commissioner has decided that widower's benefits, disallowed on or after 8/6/73, solely because of failure to meet the one-half support requirement, will be treated the same as husbands' claims under *Wright v. Califano* (10/4/77) (see RS 00202.027).

NOTE: *The notice to the claimant contained in RS 00207.027 B. should be modified for widowers' claims by adding as a final sentence the following: "The Social Security Administration has decided that widowers' claims are to be treated as if covered by this decision."*

A claimant is the widow(er) of the WE if he or she meets one of the relationship requirements discussed in B. below; and either one of the duration-of-marriage requirements discussed in C. below; or any of the alternatives discussed in C. below.

B. Relationship Requirement

The claimant must:

1. be considered as validly married to the WE under the laws of the State of the WE's domicile (see GN 00305.005-GN 00305.025) at the time of his or her death; or
2. have the same rights as a widow(er) to share in the distribution of the WE's intestate personal property under the laws of the State of the WE's domicile at the time of the WE's death; or
3. have gone through a marriage ceremony with the WE in good faith resulting in a marriage which would have been valid except for a legal impediment (see RS 00207.020 for further discussion of requirements).

A claimant who qualifies under 1. or 2. above is termed a "legal widow(er)." If he or she qualifies only under 3, the claimant is referred to as a "deemed" widow(er). These are terms of convenience for use within SSA only; they are not to be used in any discussion with, or in any correspondence to claimants, applicants, or the public. In some instances it may be possible for more than one claimant to meet the relationship test on the same E/R, i.e., one claimant can meet the valid marriage test, and another can qualify under the inheritance test. (Putative marriages which meet the inheritance test are discussed in the Arizona, California, Colorado, Louisiana, Illinois and Minnesota entries in GN 00305.275.)

C. Duration-of-Marriage Requirement

In addition to meeting one of the relationship tests in B. above, the claimant must have been married to the WE for not less than 9 months (1 year for benefits payable before 2/68) immediately prior to the day on which he or she died. The 9-month requirement may be deemed to be met if the claimant was married to the WE and (effective 1/73) the WE's death was accidental; or the WE's death occurred in the line of duty while a member of a uniformed service on active duty or active duty for training; or if the claimant was married to the WE at the time of death, and was previously married to and divorced from him or her and the previous marriage had lasted 9 months. These three exceptions to the 9-month requirement do not apply if, at the time of marriage, the WE could not have reasonably been expected to live for 9 months. (See GN 00305.300-GN 00305.325 for a detailed explanation of these exceptions to the 9-month requirement.) A claimant who was not married to the WE for the required period of time may qualify if he or she meets one of the alternative tests listed in D. below.

For months before 1/73, a widow(er) must have been married to the WE for at least 3 months even though the accidental death or death in the uniformed services exceptions applied.

D. Alternatives to the Duration-of-Marriage Requirements

A claimant who meets one of the relationship tests in B. may, as an alternative to meeting the duration requirement in C., qualify as the widow(er) of the WE if he or she:

1. is the biological mother or father of the WE's biological son or daughter (even if the child is now deceased); or
2. while married to the WE has legally adopted the WE's son or daughter before the child attained age 18 (see NOTE below); or
3. is the mother or father of a son or daughter who was legally adopted by the WE while married to the claimant and before the child attained age 18. The adoption of a child by the WE's surviving spouse within 2 years after the WE's death will qualify the claimant if:
   a. he or she is the natural mother or father of the child being adopted, and
   b. the adoption of a child by its natural parent is valid where it took place;, and
   c. the child meets all conditions outlined in GN 00306.270 to be deemed legally adopted by the WE as of the date of the WE's death (see NOTE below); or
4. was married to the WE at the time both of them legally adopted a child under age 18; or

NOTE: *The equitable adoption of a child will not meet the requirements of items 2-4 above since that is not a "legal adoption."*

5. was entitled or potentially entitled to spouse's (including deemed or divorced spouse's), widow(er)'s (including deemed widow(er)'s or surviving divorced spouse's), parents, or childhood disability benefits in the month before the month he or she married the deceased WE. The widow(er) is considered to have been "potentially entitled" if he or she met all the requirements for entitlement other than the filing of an application and attainment of the required age. (See RS 00202.205 for establishment of entitlement or potential entitlement.); or
6. the claimant must have been entitled or potentially entitled to a widow(er)'s, child's (age 18 or over), or parent's insurance annuity under the RRA in the month before he or she married the deceased WE. (See RS 00202.210 for establishment of entitlement or potential entitlement to a railroad annuity.)

00207.020 Widow(er) Under Deemed Marriage Provisions

Beginning 9/60, the term "widow(er)" includes a claimant whose marriage to the WE would have been valid except for a legal impediment provided:

A. There was a marriage ceremony.
B. The claimant went through the marriage ceremony in good faith, not knowing of the impediment at the time of the ceremony.
C. The claimant was living in the same household with the WE when he/she died. (This requirement applies even if he or she was entitled to spouse's benefits on the basis of living in the same household when the claim for spouse's benefits was filed.).
D. At the time of filing the application, there is no legal widow(er) who is or was entitled to benefits on the E/R of the WE and who still has status as a legal widow(er).
E. The impediment is one resulting from a prior undissolved marriage or otherwise arising out of a prior marriage or its dissolution, or one arising from a defect in the procedure followed in connection with the purported marriage. However, if this impediment is the result of a prior undissolved marriage of the claimant, the impediment must be removed or the prior spouse must have died before the claimant can be entitled as a widow(er).

For a discussion of the above requirements, see GN 00305.170-GN 00305.205.

00207.030 Requirements for Entitlement for a Widow(er)

The claimant must:

A. Be the widow(er) of a WE who died fully insured (or transitionally insured —see RS 00301.500-RS 00301.540). For benefits before 9/65, the claimant must be the widow(er) of the WE who died fully insured;
B. Have attained age 60 (age 62 before 9/65), or have attained age 72 before 1969 if the WE was only transitionally insured; or (for months after 1/68) have attained age 50 but not age 60, and be under a disability; (See RS 00207.070 for disability requirements and waiting period before benefits may be paid.)
C. Be unmarried, unless the marriage can be disregarded per RS 00207.170. For benefits before 9/65, the claimant must not have remarried except under conditions set forth in RS 00207.170. For months before 1/73, a widower must not have remarried before he attained age 62;
D. Have filed application for widow(er)'s benefits (see RS 00207.210 for exceptions to the filing requirement); and
E. Not be entitled to an RIB which equals or exceeds the deceased WE's PIA or, effective 6/78, the WE's deemed PIA. (A widow(er) may elect not to receive the RIB and would, therefore, not be entitled.)

Even though a widow(er) could meet all the above requirements, entitlement is precluded (1) if the widow(er) was convicted of the felonious and intentional homicide of the WE (see GN 00304.110-GN 00304.185 for discussion of felonious and intentional homicide), or (2) if the RRB has jurisdiction of the survivor's claim (see RS 01601.160 for discussion of RRB jurisdiction).

00207.035 Benefits to Remarried Widowers

A. Background

As a result of the U.S. district court's decision in *Mertz v. Harris* on 6/29/78 (codified by the Social Security Amendments of 1983), SSA pays widower's benefits to a widower who, at the time of his application, is no longer married and meets the other conditions of entitlement listed in RS 00207.030.

Although any remarried widower who meets the requirements can now be entitled, it is important to define the class specified by the court because a class member may be entitled to a widower's benefit based on an earlier application. (An applicant who is not a member of the class can only be paid based on the current application.) The class is defined as all males: (1) who have filed applications for widower's benefits under 42 U.S.C. 402(f)(1); (2) who were not married at the time they made their applications; (3) whose applications, requests for reconsideration, hearings or Appeals Council reviews were disallowed solely because of the statutory requirements of 42 U.S.C. 402(f)(1)(A) (they had remarried after the death of the wife on whose record they claim the benefits); and (4) who received notices of such disallowance which were mailed to them on or after 4/30/78.

B. Applicability of Government Pension Offset (GPO) Provision

If the SS award to a *Mertz* class member is based on an application effectively filed before 12/77, GPO

does not apply. However, if the SS application was filed 12/01/77, or later, GPO would be imposed in accordance with GN 02608.500. The exception outlined in GN 02608.505 does not apply because, in 1/77, SSA was not providing benefits to remarried widowers. However, the exception in GN 02608.506 could apply if there was entitlement or eligibility for the pension before 7/1/83, and the one-half support requirement was met.

00207.040 Surviving Divorced Spouse Defined

The claimant must:

A. Be finally divorced from the deceased WE; and

B. Have been validly married to the WE for 10 years (20 years before 1/79) immediately before the date the final divorce became effective. (See RS 00202.020 for an explanation of the 10-year period and the effect of a limited interruption in the marriage and GN 00305.275 if a putative marriage is involved.)

If at the WE's death the divorce had not become effective so as to finally dissolve the marriage, the claimant may qualify as the WE's widow(er) rather than as the surviving divorced spouse. (See GN 00305.435 on State laws relating to the effective date of dissolution.)

00207.050 Requirements for Entitlement for Surviving Divorced Spouse

The claimant, in addition to meeting the requirements listed in RS 00207.030 above, must:

A. Be the surviving divorced spouse (as defined above) of the WE who died fully insured; (Transitional insured status is not enough.)

B. Have attained age 60, or have attained age 50 but not age 60, and be under a disability; (See RS 00207.070 for disability requirements.)

C. Be unmarried, or, for entitlement after 12/83, have married but the marriage can be disregarded per RS 00207.170; and

D. For months before 1/73, a surviving divorced wife must have met a support requirement (see RS 00207.060).

Beginning 1/73, based on an application filed on or after 10/30/72, a surviving divorced spouse no longer needs to meet any support or contribution requirement.

Even though the surviving divorced spouse meets the above requirements, entitlement is precluded (1) if he or she was convicted of the felonious and intentional homicide of the WE (see GN 00304.110-GN 00304.180 for discussion of felonious and intentional homicide), or (2) if RRB has jurisdiction of the survivor's claim. (See RS 00207.320 and RS 01601.160 for discussion of RRB jurisdiction.)

NOTE: *As a result of the court's decision in Ambrose v. Califano (7/16/80) (codified by the Social Security Amendments of 1983), SSA now pays widower's benefits to qualified surviving divorced husbands who file current claims as well as to those who were disallowed solely because of gender and received notice of such disallowance on or after 11/24/78. See RS 00207.380 for a discussion of awards and disallowances.*

00207.060 When Support Requirement Must be Met

The support requirement for a surviving divorced spouse must be met for months of entitlement (MOET) before 1/73. The requirement was met if the claimant was receiving at least one-half support from the deceased WE; or was receiving substantial contributions from the WE pursuant to a written agreement; or there was in effect a court order for substantial contributions to the claimant's support from the WE.

Prior to 12/82, a widower had to meet the support requirement to be excepted from GPO, but a widow did not (see GN 02608.505). After 11/82, any type of beneficiary must meet the support requirement to be excepted from GPO (see GN 02608.506).

A. Period of Disability

If the WE had a period of disability which continued until he or she became entitled to a DIB or RIB, or until death, the requirement may be met:

1. at the beginning of the period of disability; or
2. at the time the WE became entitled to a DIB; or
3. at the time the WE became entitled to RIB; or
4. at the time of the WE's death.

B. No Period of Disability or Period of Disability Terminated

If the WE did not have a period of disability which continued until he or she became entitled to a RIB or DIB, or until death, the requirement may be met at the same points described in items 2 through 4 of A. above.

00207.065 When Proof of Support Must be Filed

Proof of support for a widow(er) must be filed within 2 years of the date used (RS 00207.060 A. and B. above) to establish support unless good cause (RS 01301.255) can be found to exist. Note that good cause is deemed to exist in GPO situations. (See RS 01301.240-RS 01301.260.) Proof of support for divorced widow(er)'s can be filed anytime.

00207.070 Disability Requirements for Widow(er) or Surviving Divorced Spouse

A. General

The 1967 Amendments provided cash benefits to disabled widows age 50-60 and disabled widowers age 50-62, effective 2/68. Effective with 1/73, based on the 1972 Amendments, the age requirement for widowers is the same as for widows. These cash benefits are RSI benefits based on disability and are paid from the RSI Trust Fund.

The following subsections briefly discuss the provisions for these benefits.

B. Requirements for Entitlement

An individual is entitled to disabled widow(er)'s benefits (DWB) as of the first month in which the claimant:

1. has met the requirements, except for age, for entitlement to surviving divorced spouse's benefits or widow(er)'s benefits, including the filing of an application (see RS 00207.170 A.1. for effect of remarriage before entitlement); and
2. has attained age 50 but has not attained age 60 (proof of age is always required to establish that the claimant has attained age 50 (see GN 00302.050 ff. for additional instructions)); and
3. is disabled; however, the disability must have begun within the prescribed period; (see RS 00207.480 A.2. if the DWB onset is established by the DDS exactly 5 months prior to the WE's death); and
4. has served a waiting period or is exempt from a waiting period. In this situation benefits will begin with the first month during all of which he or she is again under a disability.

C. Disability Requirements

1. DEFINITION

Surviving divorced spouses and widow(er)s who file for benefits based on disability must meet a more restrictive definition of disability than DIB (or CDB) claimants (DI 00202.205). Their disabilities are evaluated by consideration of medical factors alone, i.e., whether a medically determinable physical or mental impairment(s) exist(s) which can be expected to result in death or have lasted or can be expected to last for a continuous period of not less than 12 months. In addition, the impairment(s) must be of sufficient severity (under regulations) to preclude any gainful activity. Claimants whose impairments do not meet the required level of severity will not be found entitled. Consequently, unlike DIB (or CDB) claims, consideration of vocational factors (age, education, and work experience) plays no part in the adjudication of DWB claims. The level of severity described in the regulation is deemed to be sufficient to preclude the claimant from engaging in any gainful activity, as distinguished from substantial gainful activity (SGA). However, as in the case of a DIB (or CDB), when a widow(er) demonstrates ability to engage in SGA, no entitlement to DWB will be found, regardless of the level of severity of the impairment(s).

It is important to note that a widow(er) may meet the insured status requirements for DIB purposes on his or her own account and may, therefore, file two claims—one for DWB and one for DIB. Since the definition of disability for DWB is more restrictive than the definition of disability for DIB, it is possible for the DWB claim to be denied even though the DIB claim is allowed.

2. WHEN DISABILITY MUST BEGIN (PRESCRIBED PERIOD)

The disability must begin before the claimant attains age 60 and no later than 84 months after the latest of the following months:

a. The month of the WE's death (see RS 00207.480 A.2. if the DWB onset is established by the DDS exactly 5 months prior to the WE's death); or
b. The month in which previous entitlement to DWB terminated because the disability had ceased; or
c. The last month for which the claimant was entitled to mother's or father's insurance benefits based on the WE's record.

A disability which began before the WE died or while the claimant was entitled to mother's or father's insurance benefits meets this requirement.

D. Waiting Period

As in the case of DIB, effective 1/73, the payment of DWB is subject to a waiting period of 5 full consecutive calendar months. The waiting period can begin no earlier than the later of (1) the first day of the 17th month before the month of filing or (2) the first day of the 5th month before the month in which the prescribed period began. There is no waiting period if the claimant again becomes disabled before age 60 and the new disability began within 84 months following the month in which prior entitlement to DWB terminated. Benefits will begin with the first month in which the claimant is disabled for the entire month.

NOTE: *In a DIB/DWB case, the DWB onset may be later than the DIB onset due to the stricter disability requirements for DWB entitlement. In such a situation, the widow(er) must still serve a waiting period prior to receiving DWB, even if he/she has already served a waiting period for DIB.*

Payment and Termination

00207.100 The Amount of a Widow(er)'s Benefit

NOTE: *The 1983 Amendments to the Social Security Act provide that an application for reduced widow(er)'s insurance benefits may be retroactive for one month in certain cases—see GN A00204.445.*

A. Widow(er) First Entitled at Age 65 or Later

Where the first MOET is the month of attainment of age 65 or later, the widow(er)'s benefit is equal to 100 percent of the deceased WE's PIA except where the deceased WE was at any time entitled to a reduced RIB or was eligible for the delayed retirement credit (DRC). (See RS 00615.301 for additional discussion.)

The 1983 amendments also provide that a widower can now be entitled effective 5/83 if his deceased wife was only transitionally insured. Previously, only a widow could be entitled under the transitionally insured status provision. A widow(er) who qualifies only under the transitionally insured provisions (RS 00301.500-RS 00301.540) is entitled to the same benefit as a transitionally insured individual. The rates for a transitionally insured individual are fixed by law and are as follows:

Benefit Amount	***Effective Date***
$129.90	12/83 on
125.60	6/82-11/83
117.00	6/81-5/82

Benefit Amount	Effective Date
105.20	6/80-5/81
92.00	6/79-5/80
83.70	6/78-5/79
78.50	6/77-5/78
74.10	6/76-5/77
69.60	6/75-5/76
64.40	6/74-5/75
62.10	3/74-5/74
58.00	9/72-2/74
48.30	1/71-8/72

B. Widow(er) First Entitled Age 60 to 65

Where the first MOET is the month of attainment of age 60 through 64 years 11 months, the widow(er)'s benefit is reduced by the number of months of entitlement prior to the attainment of age 65 and may be further reduced if the deceased WE was ever entitled to a reduced RIB. (See RS 00615.301 for a more detailed discussion.) The procedures for computing the reduced widow(er)'s benefits are in RS 00615.310 and RS 00615.680. If the deceased WE was eligible for the DRC, see RS 00615.702-RS 00615.708.

Entitlement before age 62 to a reduced widow(er)'s benefit may result in a reduction of a DIB (see RS 00615.420-RS 00615.440), and may affect the amount of an RIB to which the claimant may later become entitled (see RS 00615.160).

C. Widow(er) Remarried After Attainment of Age 60

When a widow(er) remarries after attainment of age 60, the marriage is deemed not to have occurred for entitlement and termination purposes (see RS 00207.170). Effective 1/79, the amount of the widow(er)'s benefit in such cases is as described in A. or B. above, as applicable. For months before 1/79, remarriage reduced the benefits of certain widow(er)s. (See RS 00615.670 for a more detailed explanation.)

If the remarried widow(er) qualifies only under the transitional insured status provision (see RS 00301.540), the amount specified in subsection A. above is payable. *Remember that a widower cannot qualify under this provision before 5/83.*

D. Claimant Under Age 60 and Disabled

Prior to 1/84, benefits for a widow(er) or surviving divorced spouse who is entitled because of disability are reduced for months before the claimant attains age 65 unless he or she has an entitled child of the WE in care (see RS 01310.000 ff.). After 12/83, benefits to a DWB will not be reduced for months of entitlement prior to age 60. (See RS 00615.301 for additional discussion and RS 00615.314 for the law effective 1/84.) The reduction may be adjusted when the claimant has attained age 62 and/or age 65. (See RS 00615.482 and RS 00615.580-RS 00615.595.) A person's entitlement to a DWB will result in a reduction of a DIB or RIB to which he or she may later become entitled (see RS 00615.420-RS 00615.474 and RS 00615.160 or RS 00615.472).

A claimant who is entitled to a DWB may have in care a child of the WE (under age 16, or disabled) entitled to benefits. For any months in which the child is in care, the amount of the benefit may not be reduced below the amount he or she would have received as a mother or father (see RS 00615.340).

NOTE: *The Social Security Amendments of 1983 provide that benefits to a disabled widow(er) age 50 to 59 1/2 will be increased to the amount a widow(er) would receive at age 60 had there been no DWB entitlement. This provision is effective for benefits payable after December 1983 (see RS 00615.311).*

E. More Than One Claimant Entitled

Where more than one claimant may qualify for widow(er)'s benefits on one E/R (see RS 00207.010), each qualifies for a widow(er)'s benefit computed in the usual manner after adjustment for the family maximum. However, the benefit of a surviving divorced spouse is not subject to reduction for the maximum (see RS 00615.680).

00207.110 Simultaneous Entitlement

See GN 00204.560 for additional information.

A. Entitlement to RIB and Widow(er)'s Benefits

A claimant, after attaining age 62, may be entitled to widow(er)'s benefits if his or her RIB does not equal or exceed the deceased WE's PIA. Although under this provision a claimant may be simultaneously entitled to a widow(er)'s benefit and a higher RIB (as long as the RIB does not equal or exceed the deceased WE's PIA or deemed PIA), only the RIB will be payable.

B. Entitlement to DIB and Widow(er)'s Benefits

If a claimant is entitled to a DIB which is less than the widow(er)'s benefit, he or she will receive the DIB plus the difference between such benefit and the widow(er)'s benefit. If the claimant is entitled to a widow(er)'s benefit and a higher DIB, only the DIB is payable under the simultaneous entitlement provisions. (Other benefits on the E/R of the deceased WE are not revised upward as a result of suspension of the widow(er)'s or surviving divorced spouse's benefit.) (See RS 00615.350-RS 00615.360.)

C. Entitlement to Remarried Widow(er)'s and Spouse's Benefits

A person who is entitled to a remarried widow(er)'s (including surviving divorced spouse's) benefit due to remarriage after attainment of age 60 receives the same amount, effective 1/79, as if the remarriage had not occurred. If he or she is also entitled to a higher spouse's benefit on the current spouse's E/R, he or she will receive the widow(er)'s benefits plus the amount by which the spouse's benefit exceeds it. See RS 00615.170 if the widow(er)/spouse is also entitled to RIB.

D. Entitlement to Both Widow(er)'s and Divorced Spouse's Benefits

A person who is entitled simultaneously as a divorced spouse and a widow(er) or surviving divorced spouse can receive only the higher of the two benefits.

If the divorced spouse's benefit is higher but is subject to GPO or deductions due to excess earnings, no payment of the widow(er)'s benefit can be made even though technical entitlement to the widow(er)'s benefit continues. However, the claimant should consider excluding spouse's benefits from the scope of his or her application (see GN 00204.305 and GN 00204.620).

E. Entitlement to More Than One Widow(er)'s Benefit or to Both a Widow(er)'s and Parent's Benefit

If a claimant is entitled to more than one widow(er)'s benefit or to a widow(er)'s and parent's benefit, he or she will receive the higher of the benefits.

00207.120 Nonpayment of Benefits

A. General

Payment of widow(er)'s benefits may be affected by the annual earnings test (except for payments based on disability, see B. below), and also by the following circumstances which are neither deduction nor termination events.

1. GPO. (See RS 00202.050.)
2. The WE was deported after 9/1/54, and the widow(er) or surviving divorced spouse is an alien residing outside the U.S. (See RS 02635.001 for application of this rule.)
3. The widow(er) or surviving divorced spouse is an alien who has been outside the U.S. for 6 full calendar months. (See RS 02610.001 ff., RS 02650.001 A. and RS 02610.015 for this rule and its exceptions.)
4. The widow(er) or surviving divorced spouse is an alien and is residing in a country to which the mailing of U.S. Government checks is prohibited. (See RS 02650.001 A. for rules and exceptions concerning this provision.)
5. The WE, widow(er), or surviving divorced spouse was granted a tax exemption as a member of a religious group. (See RS 01802.271 and RS 01802.272 for a detailed explanation of this rule.)
6. The widow(er) or surviving divorced spouse is confined in a jail, prison or other penal institution because of conviction for a felony. Benefits will not be suspended if the prisoner receives them based on disability and is participating in a rehabilitation program which meets certain criteria. See GN A02607.301-GN A02607.351 for further discussion.

In addition, entitlement to, or the amount of, a widow(er)'s benefit may be affected where the claimant has been deprived of certain benefit rights by sentence of a court after conviction of an offense involving espionage, sabotage, treason, sedition, or subversive activities committed after 8/1/56. (See GN 02602.010 for application of this rule.)

B. Entitlement Based on Disability

The provisions of A.1.-A.5. above apply to DWB's and disabled surviving divorced spouses. However, prior to 12/80, an individual receiving DWB did not receive a trial work period. In addition:

1. benefits are subject to deductions if the claimant refuses, without good cause, to accept vocational rehabilitation services.
2. benefits may be suspended pending investigation of whether the claimant is still under a disability. (See DI 00504.325 for conditions requiring suspension.) If the widow(er) is age 60 or over and his or her DWB is terminated prior to age 65 a new application may be required to establish re-entitlement to widow(er)'s benefits based on age and not disability (see RS 00207.130 B).
3. deductions under the annual earnings test, or for uncovered work outside the U.S., do not apply to a DWB or disabled surviving divorced spouse under age 65 if he or she became entitled for the month before age 60.

Benefits are payable for the month in which the disability ceases and for the 2 succeeding months.

00207.130 When a Legal Widow(er)'s Entitlement Ends (See RS 00207.170 B.)

A legal widow(er)'s entitlement ends with:

A. The month before the month in which any of the following events occur:
   1. The widow(er) becomes entitled to a RIB which equals or exceeds the deceased WE's PIA, or, effective 6/78, "deemed" PIA; or
   2. The widow(er) died; or

B. The second month following the month in which the widow(er)'s disability ceases if he or she became entitled to DWB before age 60. The claimant may reapply if he or she again becomes disabled within the period specified in RS 00207.070. No waiting period is required for reentitlement.

If the disabled claimant attains age 65 on or before the last day of the third month following the month his or her disability ceases, the DWB continues without an application; the claimant then becomes subject to the rules applicable to an aged widow(er); e.g., the retirement test. If the disabled claimant attains age 65 in a month later than the third month following the month his or her disability ceases, benefits will terminate; a new application is required to establish reentitlement.

ANP

00207.140 When Entitlement of a Widow(er) Under a Deemed Marriage Ends

Entitlement of a widow(er) under a "deemed marriage" ends when anything which would end a legal widow(er)'s entitlement happens. In addition, his or her entitlement will end with the month before the month in which the authorizer approves the award to

another widow(er) for entitlement to father's/mother's or widow(er)'s benefits on the WE's E/R as the legal widow(er) (see further discussion in GN 00305.205).

Although not a terminating event, if information is received establishing that the widow(er) of a "deemed marriage" knew at the time of the ceremony that the marriage was not valid, the benefits paid to him or her are erroneous and subject to recovery action. The beneficiary may also be guilty of fraud. (See GN 04020.010 for reopening these cases.)

00207.150 How Termination of Legal Widow(er)'s Entitlement Affects Widow(er) Under a "Deemed Marriage"

Upon filing application, a widow(er) under a "deemed marriage" may become entitled or reentitled where initial entitlement was terminated because of the subsequent entitlement of the legal widow(er) if the legal widow(er)'s entitlement terminated because he or she died. However, termination of the legal widow(er)'s entitlement because he or she became entitled to a RIB which is equal to or exceeds the deceased WE's PIA will not permit entitlement or reentitlement of the widow(er) under the deemed marriage provision. This is because (a) the legal widow(er) still has status as such, and (b) he or she was previously entitled to a benefit on the WE's E/R. Under such circumstances, the deemed marriage provision is not applicable (see GN 00305.190).

00207.160 When Surviving Divorced Spouse's Entitlement Ends

The entitlement of a surviving divorced spouse ends with:

A. The month before the month in which any of the following events occur:

1. The spouse becomes entitled to a RIB which equals or exceeds the deceased WE's PIA or deemed PIA; or
2. The spouse dies; or

B. The second month following the month in which the claimant's disability ceases if he or she became entitled before age 60. The claimant may reapply if he or she again becomes disabled within the period specified in RS 00207.070. No waiting period is required for reentitlement.

If the disabled claimant attains age 65 on or before the last day of the third month following the month his or her disability ceases, widow(er)'s benefits continue without an application; he or she becomes subject to the rules applicable to an aged widow(er); e.g., the retirement test. If the disabled claimant attains age 65 in a month later than the third month following the month disability ceases, benefits will terminate; a new application is needed to establish reentitlement.

00207.170 How Marriage Affects Widow(er)'s Benefits

A. Effect of Remarriage on Entitlement

Generally an applicant for widow(er)'s or surviving divorced spouse's benefits must be unmarried in order to be entitled. However, under certain conditions, the remarriage may be disregarded (i.e. deemed not to exist).

1. FOR MONTHS AFTER DECEMBER 1983

Effective for benefits after December 1983 the following rules apply:

a. The remarriage of a claimant applying for benefits as a disabled widow(er) may be disregarded if:

1) The remarriage occurred after attainment of age 50; and
2) The widow(er) was disabled at the time of the remarriage.

b. The remarriage of a claimant applying for benefits as a disabled surviving divorced spouse may be disregarded if:

1) The remarriage occurred after age 50; and
2) The surviving divorced spouse was disabled at the time of the remarriage; and
3) The WE was deceased at the time of the remarriage.

NOTE: *For purposes of disregarding a remarriage after attainment of age 50 for entitlement to benefits as a disabled widow(er) or disabled surviving divorced spouse, he/she must meet the definition of disability stated in RS 00207.070 C.1. However, the disability does not have to have begun within the prescribed period described in RS 00207.070 C.2. The only time requirement is that he/she must be disabled at the time of the remarriage.*

c. The remarriage of a claimant applying for benefits as a widow(er) age 60 or over may be disregarded if:

1) The remarriage occurred after attainment of age 60; or
2) The remarriage occurred after attainment of age 50 and the claimant was entitled to benefits as a disabled widow(er) at the time of the remarriage.

d. The remarriage of a claimant applying for benefits as a surviving divorced spouse age 60 or over may be disregarded if:

1) The remarriage occurred after attainment of age 60 and the WE was deceased at the time of the remarriage; or
2) The remarriage occurred after attainment of age 50, and the claimant was entitled to benefits as a disabled surviving divorced spouse was disabled at the time of the remarriage.

NOTE: *For purposes of disregarding a remarriage after attainment of age 50, for entitlement to benefits as an aged widow(er) or disabled surviving divorced spouse actual entitlement to disabled widow(er)'s benefits (DWB) must have existed at the*

time of the remarriage; deemed DWB entitlement for HI purposes does not suffice.

Example 1:

Martha Jackson files for benefits as a disabled widow at age 55. She advises us that her first husband died when she was age 49, that she became disabled at age 51, and that she remarried at age 52. Since Martha was a disabled widow (i.e., between age 50 and 60, disabled, and a widow) at the time of her remarriage, the remarriage may be disregarded and she may be entitled to benefits as a disabled widow.

Example 2

Majorie Jones was born on November 15, 1924. She became entitled to DWB at age 58. She remarried in April 1984. Her DWB were terminated in August 1984 due to cessation of disability. In November 1984, at age 60, she applied for widow's benefits. Marjorie's marriage may be disregarded because she was entitled to DWB at the time she remarried.

Example 3:

Betsy Smith, age 62, files for widow's benefits. She advises us that her husband died when she was age 48, she became disabled at age 49, and remarried at age 54. She never applied for DWB. Her marriage may be disregarded for entitlement to widow's benefits since she was not entitled to DWB at the time she remarried.

Example 4:

Barbara Mitchell applies for aged widow's benefits at age 60. She states that her first husband died when she was age 54, she remarried at age 59, and is still married. She was not disabled at the time of her remarriage. She is not entitled to widow's benefits because her remarriage was prior to age 60 and may *not* be disregarded.

Example 5:

Anita Jones, age 64, files for benefits as a surviving divorced wife because her former husband has just died. She advises us that she remarried at age 61. Her marriage may not be disregarded because Anita was not a surviving divorced wife at the time she remarried since her former husband was still alive.

2. FOR MONTHS PRIOR TO 1984

For benefits prior to January 1984 the remarriage of a widow(er) may be disregarded if the remarriage occurred after attainment of age 60. The remarriage of a disabled widow(er), disabled surviving divorced spouse or surviving divorced spouse could not be disregarded and therefore precluded entitlement.

B. Effect of Remarriage on Termination of Entitlement

Remarriage will not terminate the benefits of a person entitled to aged widow(er)'s benefits. Under the 1983 amendments, effective January 1984, remarriage will also not terminate the benefits of a person entitled as a disabled widow(er) or aged or disabled surviving divorced spouse.

Prior to January 1984, the law provided that the benefits of a disabled widow(er) who remarried before attainment of age 60, or a surviving divorced spouse who remarried at any age, would not be terminated if the marriage was to a person entitled to wife's, husband's, widow(er)'s, mother's, father's, parent's, or childhood disability benefits. The 1983 amendments repealed this provision.

NOTE: *A person whose benefits were terminated due to remarriage prior to the change in law must file a new application in order to be reentitled to benefits.*

C. Effect of a Void Remarriage

A remarriage which is absolutely void does not preclude entitlement to widow(er)'s benefits except where such remarriage constitutes a putative marriage in Louisiana (see GN 00305.275 for definition of putative marriage in Arizona, California, Colorado, Illinois, Louisiana, and Minnesota). A putative marriage in Louisiana has the same effect as a valid marriage on entitlement for months prior to the termination of the putative relationship by acquisition of knowledge of the defective relationship. A remarriage which is a putative marriage in any of the other abovementioned States will not affect entitlement.

D. Effect of Remarriage Before September 1965

The remarriage of a widow barred entitlement to widow's benefits unless:

1. the subsequent husband died within 1 year not fully insured; or
2. the marriage was void, or under certain conditions, if a voidable marriage was annulled as explained in GN 00305.335-GN 00305.360.

The remarriage of a widow entitled to widow's benefits terminated entitlement unless the marriage was to an individual entitled to widower's, parent's, or childhood disability benefits. The widow's benefits terminated in the same month her husband's entitlement to childhood disability benefits terminated, except when his entitlement terminated by his death.

Evidence and Applications

00207.200 Evidence Requirements

	Subject	*When Required*
A.	Age of widow(er) or surviving divorced spouse	Always

	Subject	*When Required*
B.	Age of WE	If it affects insured status or PIA, or when required quarters depend upon year WE attained age 72 (see RS 00301.500 and RS 00301.520). See GN 00302.001 to determine when development is required.
C.	Death of WE	Always, unless established in a prior claim or an automatic conversion of benefits is involved (see GN 00304.001-GN 00304.105 and RS 00207.210). (See GN 00305.320 if the claimant was married less than 9 months.)
D.	Marriage	Always, unless established in a prior ~~monthly benefit~~ claim. This includes the statements on a prior SSA-2-F6 and SSA-3. Do not assume marriage was established in a prior LSDP claim. See GN 00305.075-GN 00305.105 and GN 00305.242-GN 00305.270 for sources of evidence. Where widow(er) was estranged, see RS 00207.370. Where claimant filed as surviving divorced spouse, it is necessary to establish that the marriage lasted for at least 10 years (20 years for benefits before 1/79). See RS 00207.325 for further discussion. Follow GN 00305.045 and GN 00305.440-GN 00305.480 on when to question validity of marriage to WE. (See GN 00305.110-GN 00305.165.)
E.	Remarriage and termination of remarriage if marriage has ended	If a widow(er) or surviving divorced spouse seeks to qualify following remarriage (see RS 00207.330).
F.	Termination of prior marriage	If there is reasonable doubt whether a prior marriage of WE, widow(er), or surviving divorced spouse ended (see GN 00305.365-GN 00305.370).
G.	Living in the same household	Always if a deemed marriage is involved, or if an application is effective for the lump-sum for deaths before 1981. For payment of the LSDP where the WE died ~~9/1/84~~ 9-1-81 or later, LISH would have to be established only if the widow was not entitled to or eligible for benefits in the month the WE died. See RS 00210.042 and RS 00210.007.
H.	Form SSA-3820-F6 and Medical Development	Always, when a widow(er) or surviving divorced spouse is claiming benefits based on disability (see CM 6508, CM 6529, RS 00207.070, RS 00207.400 and GN 00205.050).
I.	Wages and SEI	Always, unless PIA has been established. See RS 00605.513 regarding automatic recomputations.
J.	Selection of representative payee	See GN 00502.130 if claimant is incapable of handling funds.
K.	Adoption	When widow(er)'s eligibility depends upon adoption of child.
L.	Application	Always, unless an automatic conversion from spouse's benefits is involved (see RS 00207.210).
M.	Proof of divorce from WE	Surviving divorced spouse only. Obtain the divorce decree or a certified copy thereof. Generally, the validity of the divorce need not be questioned (see GN 00305.110-GN 00305.165 and GN 00305.440-GN 00305.480).

	Subject	*When Required*
N.	Court order for support agreement (for months of entitlement before 1/73)	When surviving divorced spouse's eligibility depends on court order or written agreement for support (see RS 00207.040).
O	Support	If GPO is involved, or in surviving divorced wife claims, if entitlement exists prior to 1/73
P.	Form SSA-1473 (Request for Railroad Annuity Information)	Where it is necessary to determine if the claimant was entitled or potentially entitled to a railroad annuity in month prior to his/her marriage to the WE (see RS 00207.310).
Q.	SSA-21 (Supplement to Claim of Person Outside the United States)	When widow(er) or surviving divorced spouse lives outside the U.S. or intends to leave the U.S. (see GN 00205.170-GN 00205.185, GN 00203.205, GN 02605.550-GN 02605.571, and GN 02401.080).

00207.210 PSC Conversion Where No Application Is Required

A. Mother's or Father's to Widow(er)'s Benefits

For a complete discussion of these conversions, see RS 00208.200.

B. Spouse's to Widow(er)'s Benefits

In conversion cases when a claimant is entitled to spouse's benefits as a legal spouse and notice is received that the WE died, both benefits will be terminated.

1. Make the conversion according to the following guide. If the spouse is:
   a. Age 65 or older, conversion will be made to widow(er)'s benefits, including the LS.
   b. Under age 65 with an entitled child in care, see RS 00208.210.
   c. Age 62 through 64 and 11 months when the WE dies, an application is not necessary because conversion will be made to widow(er)'s benefits, including the LS, unless the spouse is also entitled to a RIB or DIB. The widow(er) will also be made payee for any child or children for whom the WE was payee. (See RS 00208.210 for instructions to follow in payee situations.)

   If an annual report is needed for the year of death, see RS 02510.455.
2. Do not make the conversion if:
   a. The WE's SSN is in the "700" series, the SS-5 is stamped "RRB," or other information in file indicates that it is necessary to determine whether RRB or SSA has jurisdiction of the survivor claim (see RS 01602.680); or
   b. The WE was transitionally insured (see E. below); or
   c. The spouse was entitled based on a deemed marriage and either:
      1) The impediment was a prior marriage of the surviving spouse that is undissolved at the time of the WE's death (in this case, the impediment must be removed before the claimant can be entitled to widow(er)'s benefits); or
      2) Proof of living in the same household (LISH) is not in file. Assume that the WE and the widow(er) were LISH at the time of the WE's death if both checks were being sent to the same address unless evidence in file indicates otherwise. Develop LISH if it appears that the checks were sent to the same address only because one spouse was representative payee for the other. If the prior marriage has not been dissolved, the claimant cannot be entitled to widow(er)'s benefits, and it is therefore not necessary to obtain proof of LISH. For payment of the LS to a defacto spouse, see RS 00210.018 B.

C. Surviving Divorced Mother or Father to Surviving Divorced Spouse (Widow(er)) Benefits

When a surviving divorced mother or father receiving those benefits attains age 65, the PC will convert them to widow(er)'s benefits under the conditions stated in A. above provided the mother or father had been married to the deceased WE for 10 years immediately before their final divorce. If the surviving divorced mother or father is age 60 through 64 and 11 months, those benefits will not be converted to reduced widow(er)'s benefits; the mother or father must file application for such benefits and have been married to the deceased WE for the 10-year period. Note that there is no 10-year marital duration requirement for entitlement to surviving divorced mother's or father's benefits, but the 10-year requirement must be met for entitlement to benefits as a surviving divorced spouse (widow(er)).

D. Surviving Divorced Spouse—Spouse to Widow(er) Benefits

In conversion cases when a claimant age 65 or older is entitled to spouse's benefits as a divorced spouse and notice is received that the WE died, his or her benefit as well as the WE's will be terminated. The PC will prepare a widow(er)'s benefit award to her/him. A LS award will not be prepared for the surviving divorced spouse unless an application on the basis of equitable entitlement is filed (see RS 00211.005). Note that there can be no equitable entitlement if the WE died after August 1981 (see RS 00210.007.)

If the divorced spouse is under age 65, but is age 62 through 64 and 11 months, when the WE dies, an application is not necessary unless the divorced spouse is also entitled to an RIB or DIB.

The foregoing conversion procedure will not apply if the WE's SSN is in the "700" series or other information in file indicates that it is necessary to determine whether RRB or SSA has jurisdiction of the survivor claim (see RS 01602.680 and SM 00340.770).

If an annual report is needed for the year of death, see RS 02510.455.

E. Wife to Widow—Transitional Insured Status Prior to 5/83 (See RS 00207.100)

A husband or widower could not be entitled prior to 5/83 if his wife was only transitionally insured, so this conversion would not apply to a man for months before 5/83 (see RS 00207.100). It does apply to a wife, however.

If a woman age 72 or older is receiving benefits as the wife of a WE who qualifies only under the transitional insured status provision and notice is received that the WE dies, her benefit as well as the WE's will be terminated (a LS is not payable). The PC will prepare an award for widow's monthly benefits (see RS 00207.100 for rate), effective with the month the WE died unless:

1. a request for determination of jurisdiction is made to RRB under SM 00340.601; or
2. the claimant is a deemed spouse, and it is necessary to develop LISH (see B.3. above).

Development

00207.300 DO Action Upon Death of WE Where Spouse Is Entitled

A. General

Generally, proof of death is not required in automatic conversion cases; however, proof must be obtained in those situations described in GN 00304.005.

If the WE's SSN is in the "700" series or it appears that RR employment is involved, see RS 00207.320.

A widow(er) or surviving divorced spouse who receives benefit checks for the month of the WE's death or a later month may keep them unless a deduction is in order, some other termination event has occurred, or it appears from the WE's SSN ("700" series) or other information that RR employment is involved. Any overpayment or underpayment will be adjusted against the widow(er)'s benefits. (See GN 02404.003-GN 02404.004 for procedure for authorizing survivor to negotiate a combined check.)

B. Spouse Age 65 or Older

When a claimant age 65 or over is entitled to spouse's (including divorced spouse's) benefits and the DO receives notice of the WE's death from a source other than the PC, it will immediately notify the PC of the WE's death using the direct input procedure whenever applicable and will retain the proof of death. The DO will not prepare an award under these conditions but will complete any additional necessary development.

This development may include:

1. Additional wages or SEI for a survivor's recomputation (see RS 00605.513);
2. Proof of LISH when necessary. For deaths 9/81 or later, this would be necessary only when a deemed spouse is involved since a legal spouse need only be eligible for benefits for the month of death to receive the LS. In addition, development of the deemed spouse's current marital status may be necessary when the impediment to the WE's marriage is the spouse's prior undissolved marriage. When notice of death is received, the DO will undertake development of these issues only if it believes that it is required. See GN 00305.200 D. and F. for more detail on these requirements.
3. An annual report (see RS 02510.455);
4. Substitution of a representative payee (see GN 00502.050 and GN 00504.005- GN 00504.015);
5. Development as to possible LS claim where a claimant was entitled to benefits as a divorced spouse. A surviving divorced spouse cannot qualify on the basis of relationship but, if the WE died prior to 9/81, may file as an equitably entitled individual, or to authorize payment to a funeral home if he/she assumed responsibility for funeral home expenses and good cause is alleged.

C. Spouse Under Age 65

When a spouse is entitled because he or she had a child in care, follow the instruction in RS 00208.220.

When a claimant is entitled to reduced spouse's benefits and is age 62 through 64 and 11 months and entitled to an RIB or DIB, an application is necessary in order to qualify for reduced widow(er)'s benefits (RS 00207.210 C.). If the claimant wishes to file for reduced widow(er)'s benefits, take an application, complete the development required in RS 00207.300 A. and prepare an award.

00207.310 Development for Prior or Potential Entitlement to RIB or RRB When Widow(er) Is Married to WE Less Than 9 Months

Develop prior or potential entitlement to SS benefits where the widow(er) was married to the WE for less than 9 months and does not meet any of the other requirements in RS 00207.010 C. Where the widow(er) alleges prior or potential entitlement as a divorced spouse or surviving divorced spouse, secure proof of all pertinent factors of entitlement for such benefits (see RS 00207.050).

Where it is necessary to establish entitlement or potential entitlement to a widow(er)'s, parent's or child's (over 18) annuity under the RRA, follow the instructions in RS 00202.210.

The above development will not be necessary if the widow(er) was married to the WE and (a) the WE's death was accidental, or (b) he or she died in line of duty while a member of a uniformed service serving on active duty, or (c) the claimant had the necessary relationship to the WE for at least 9 months as a result of a previous marriage which ended in divorce and remarriage took place prior to the WE's death (see GN 00305.300-GN 00305.325).

00207.320 DO Action When Notice of WE's Death Received—RR Employment Involved

When a claimant age 62 or over is entitled to spouse's benefits and the DO receives notice of the WE's death from other than the PC, the DO, if it appears that RR employment is involved, will process the notice of death in the usual manner using direct input and will retain the proof of death (see GN 02602.150 ff.). The DO should not develop the RR employment.

In the event the claimant is interviewed and from the information he or she furnishes, it appears that RRB has jurisdiction of the survivor's claim, the DO will refer the widow(er) to RRB in accordance with the referral procedure in RS 01602.180 C. since an application is necessary under the RRA. If it appears, however, that SSA has jurisdiction of the survivor's claim, the DO need take no further action concerning the RR employment.

If the claimant is a legal widow(er) or widow(er) by a deemed marriage, tell him or her there will be a slight delay in the adjudication of the claim because the spouse's RR and SS E/R's must be combined for the purpose of determining the amount of the benefits and that the law prevents anyone from receiving survivor benefits under both programs. If a survivor is entitled to an LSDP or survivor's monthly annuity under the RRA, SSA will pay no LSDP nor survivor benefit to any person based on the DWE's account. This is important so that the widow(er) will not be led to believe he or she will receive the checks immediately, or that he or she can receive survivor benefits from both agencies.

00207.325 Surviving Divorced Spouse—When to Question Validity of Divorce or Marriage

A. Divorce

While the divorce decree, a certified copy thereof, or an abstract certification, is always required, generally the validity of the divorce need not be questioned. Follow GN 00305.440-GN 00305.445 on when the validity should be questioned and evidence required.

B. Marriage

A divorce presupposes that the marriage terminated by the divorce was a valid one. Thus, proof of the divorce also constitutes evidence of the validity of the surviving divorced spouse's marriage to the WE. However, proof of the validity is required when:

1. Development is necessary to establish the validity of the claimant's divorce from the WE; or
2. Information in file, in the divorce decree, etc., raises a reasonable doubt of the validity of the marriage.

Follow GN 00305.045, if necessary, when questioning the validity of the surviving divorced spouse's marriage to the WE..

If the divorce decree contains sufficient information to determine that the marriage lasted at least 10 years, no other proof of marriage is required unless there is reason to doubt the decree. If doubt is raised, proof of marriage must be obtained. (See GN 00305.075-GN 00305.105.)

Link 2 RS 00207.00 ff. AWP

00207.330 Development for Entitlement to Widower's Benefits When Applicant Has Remarried

If a person applying for entitlement to widow(er)'s benefits has remarried, include the following information about the later marriage in the marital history questions or under "Remarks" on the application: (a) date of the marriage; (b) name and SSN of the later spouse, and whether the spouse is entitled to benefits; and, (c) whether the marriage is still in effect. Consider possible entitlement on the later spouse's E/R. If a claim was filed on the subsequent spouse's E/R, it will not be necessary to resubmit any evidence already included with that claim. The DO will refer the appropriate SSN for verification.

If the later marriage is one which would preclude entitlement and the claimant alleges the marriage has ended, obtain proof of termination (death certificate or copy of divorce or annulment decree). Note that if there is more than one such marriage, only proof of termination of the last marriage is required. If the later marriage is one which would not preclude entitlement (e.g., it occurred after the claimant attained age 60) and the claimant alleges that the marriage has ended, accept the claimant's allegation.

If the marriage is still in effect, obtain proof of the marriage (see GN 00305.075-GN 00305.295) to establish that it occurred after the required age (and after onset of disability or entitlement to disabled widow(er)'s benefits, if either requirement is applicable).

This is in addition to the evidence required from a nonremarried widow(er) or surviving divorced spouse (see RS 00207.200). Note: An abstract certification of a divorce decree is now acceptable proof that a marriage ended.

00207.350 Development When Person Entitled to Widow(er)'s Benefits Remarries

A. DO Action Where Entitled Widow(er) or Surviving Divorced Spouse Reports Remarriage

If a person entitled to widow(er)'s benefits reports a remarriage to the DO, the DO will determine the date of marriage, the name and SSN, if any, of the spouse,

and (for a widow(er) who remarried after attainment of age 60 prior to 1/79) whether the spouse is entitled to divorced spouse's, widow(er)'s, mother's, father's, parent's, or childhood disability benefits. Also, undertake development to determine if the widow(er) could be entitled to benefits based on the new spouse's E/R. If the new spouse is receiving DIB or RIB, see RS 00207.330. The DO will furnish the information through SALT (see SM 00607.032). If the marriage occurred before 9/65, see RS 00207.170.

B. PC Action Where Entitled Widow(er) Reports That Remarriage Occurred Before 1/79

As a result of the 1977 amendments, after 12/78, the remarriage of a widow(er) age 60 or older does not reduce the widow(er)'s benefit. Those widow(er)s receiving reduced benefits in 12/78 because of remarriage had their benefits automatically increased effective 1/79 to the same rate they would have received if they had not remarried.

NOTE: *An abstract certification of a divorce decree is now acceptable proof that the marriage ended.*

00207.360 Action Where An Applicant, Widow(er), or Surviving Divorced Spouse Does Not Know WE's Whereabouts

For a general discussion of development required where a claimant does not know if the WE is alive or dead, see RS 00202.220.

00207.370 Development Where Widow(er) Is Estranged Spouse

In addition to documentary evidence of the marriage, obtain a statement from the widow(er) as to whether he or she ever obtained a divorce from the WE, was served with notice of a divorce proceeding, or otherwise was notified that the WE was trying to get a divorce. In the absence of evidence to the contrary, it may be found without further development that the widow(er)'s marriage continued until the WE died.

If after the separation the widow(er) or the WE lived with another person and they were known as husband and wife, verify that the marriage was not terminated. Secure statements from relatives or other persons who have knowledge of the facts as to the parties' marital status and their places of residence following the separation. Fully develop any indication that the widow(er) and the WE were divorced or remarried. If the evidence is not sufficient for a determination, the widow(er) must submit statements from the appropriate clerks of court that there is no record of a divorce; as explained in GN 00305.140, these statements must cover all places of his/her residence and all known places of the WE's residence during the separation.

00207.380 Awards and Disallowances

A. Awards

When a claimant entitled to widow(er)'s benefits remarried (prior to 1/79 and after attaining age 60) a person other than an individual entitled to divorced spouse's, widow(er)'s, mother's, father's, parent's, or childhood disability benefits, the PC will make the necessary adjustment to pay the appropriate rate for benefits before 1/79. The symbol "D4" will indicate that a woman is a remarried widow, and "D5" will be shown for a widower who remarries after age 60.

Adjudicate a claim by a surviving divorced husband in the same manner as a claim by a surviving divorced wife with the following exceptions. Use the beneficiary identification code "DC" ("DM" for the second claimant) for a surviving divorced husband and "WR" ("WT" for the second claimant) for a disabled surviving divorced husband.

These claims are exclusions to APO (i.e. CAPS and EAM). The SSA-3687-U2 in CAPS cases will be processed with an RV 14 (and any other applicable review codes). Prepare an SSA-101-U3. The routing Form, SSA-3293 in CAPS cases, should be annotated "Surviving divorced husband's claim—process under MADCAP procedure." (These cases can now be processed through MADCAP but will create exceptions in CAPS or EAM at present because neither of these has been programmed to accept the applicable BIC's.)

B. Disallowances

If a claim is disallowed because a surviving divorced spouse does not meet the 10-year marriage requirement, enter Disallowance Code No. 36 on the SSA-3428-U2.

If a widow(er)'s claim is being disallowed because he or she was married less than 9 months, use Disallowance Code 31—Not Married Within Time Limit. Before 1/73, if a widow was married to the WE for at least 3 months, but the deemed 9-month requirement is not met, add under remarks on the SSA-3428-U2, "Deemed 9-month requirement not met." Effective 1/73, the duration-of-marriage requirement is deemed if certain conditions are met (see RS 00207.010).

If the applicant for widower's benefits as a surviving divorced husband does not meet one or more of the requirements for entitlement, prepare a disallowance using Form SSA-3428-U2. Use the same reason for disallowance as would be applicable in disallowing a claim by a surviving divorced wife. The adjudicator preparing the disallowance will process the form through MADCAP. Prepare a disallowance notice, using language similar to that used to disallow a surviving divorced wife.

NOTE: *(1) See SM 00424.300 for instructions on establishing SSACCS controls and SM 00424.046 for clearing SSACCS controls in surviving divorced husband's claims. (2) GPO may be involved any time the surviving divorced wife was married to the WE for less than 20 years. (See GN 02608.505-GN 02608.507 for a further explanation.)*

Disabled Widow(er)'s Cases—Processing

00207.400 General

Benefits for disabled widow(er)'s are RSI benefits and will be paid from the RSI Trust Fund through the servicing PC after disability has been established. Processing is similar to that used for CDB cases with the exceptions noted below. (See RS 00207.495 for discussion on health insurance for disabled widow(er).)

00207.410 FO Action—Initial Claims—Claimant Age 50-60

If a widow(er) or surviving divorced spouse between ages 50 and 60 is filing for the first time on the deceased WE's E/R and alleges disability, secure E/R's for both the WE and the widow(er). Prepare a claims folder and forward it in accordance with DI 11015.000 completing the SSA-831-U5 per DI 11010.040. If the widow(er)'s E/R shows he or she meets the disability earnings requirement for DIB, see GN 00204.300 C.

See GN 01010.086 G. for processing widow(er)-LSDP claims.

Do not delay forwarding a DWB claim to the DDS pending widow(er)'s DB development. If all other development is completed, forward the claim to the DDS if the DO is certain that the age requirement of the widow(er) will be met.

00207.420 FO Action—Claimant Age 50-60 Previously Entitled to LSDP, Mother's or Father's Benefits or Widow(er)'s Benefits Based on Disability

A claimant for disabled widow(er)'s benefits who was previously entitled to a benefit on the WE's E/R will file an SSA-10-BK and SSA-3820-F6 and submit proof of age (unless previously submitted) and, if the prior entitlement was for the LSDP only, proof of marriage. The FO will request E/R's for both the WE and the widow(er). If the only prior claim was for the LSDP, treat the widow(er)'s claim as an initial claim (see DI 01010.017).

Since the period in which the disability requirement must be met is directly related to the date of death or the date prior benefits terminated, include verification of the later of these dates in the file before it is forwarded for a disability determination. Where the date of death is not more than 84 months before the widow(er)'s filing date or if it is clear that the widow(er) was disabled within 84 months following the WE's death, use either the date of death or the date of termination. Use the date most readily established.

Verify as follows:

A. Date of Death

1. If the FO has a record which shows the date of the WE's death (i.e., SSA-250, microfiche, or MBR), and knows that proof of death was submitted, certify these facts on an RC or in the remarks portion of Form SSA-3820-F6. Be sure to include the exact date of death.
2. If the FO has no record, request proof of death from the applicant if readily available.
3. If the applicant is unable to furnish proof and alleges the evidence was previously submitted to SSA, use the DOTEL procedure in GN 01070.200 ff. to determine if proof of death is in the prior claim folder.
4. If no proof of death is found in SSA's records, the FO will obtain the evidence by certifying the public record or by other established procedures.

B. Date Prior Benefits Terminated

1. If there is a FO record showing that the claimant was previously entitled to mother's, father's, or disabled widow(er)'s benefits (i.e., SSA-250, microfiche or MBR) and the date that these benefits terminated is shown, certify this information on an RC or in the remarks portion of Form SSA-3820-F6. If termination is not indicated but the record shows that the claimant received mother's or father's benefits and lists the ages of the children that were in care, use the month that the youngest child attained age 18 (or 16 if MOET is 9/81 or later) as the termination date unless there is an indication that the benefits were terminated earlier.
2. If there is no FO record, ask the claimant for a termination notice from SSA and include the notice in file or include the pertinent information in the file on an RC or in the remarks portion of Form SSA-3820-F6.
3. If the above steps are nonproductive, and the claimant alleges receiving mother's or father's benefits until the youngest child attained age 18, or married, ask the claimant to submit proof of such child's age or marriage. Assume that the mother's or father's benefits continued until the appropriate terminating month.
4. If none of the above is available, follow DOTEL procedures to verify the termination date. (See A.4. above.)

   When forwarding the claim for a disability determination, see DI 11010.040 for completion of the SSA-831-U5.

00207.430 FO Action—Claimant Age 60 (or Within 3 Months of That Age) But Not Yet 61

A claimant whose first MOET to widow(er)'s benefits is no earlier than the month he or she attains age 60 qualifies for benefits under the regular widow(er)'s provisions rather than on the basis of being under a disability. However, if a claimant is under age 61, there may be months in the retroactive period prior to age 60 for which he or she can receive benefits. This can occur only if it is established that the claimant was disabled in one or more months after the expiration of

the 5-month waiting period, and in which he or she had not attained age 60.

If, at the time the claim is ready for forwarding, the widow(er) has attained age 60, or will attain that age within 4 months, send the SSA-10-BK and evidence to support the widow(er)'s claim directly to the PC. On the SSA-101-U3 include the LSDP, if appropriate. Use the month of attainment of age 60 as the MOET and compute the benefit rate without regard to possible entitlement to DWB. In "remarks", indicate "Disabled widow(er)'s claim pending."

Forward the SSA-3820-F6, widow(er)'s E/R and disability material with an SSA-831-U5 for a disability determination in accordance with DI 11015.000 and DI 11010.000. If disability is established, the FO will prepare an amended award to correct the date of entitlement and benefit rate.

00207.440 FO Action—DIB Claimant Eligible for Widow(er)'s Benefits

If a DIB claimant appears to be eligible for widow(er)'s benefits, and the FO has no record of a prior claim, it will request the deceased spouse's E/R at the same time it sends for the DIB E/R. If the type of action entry of the SSA-450 is "CD," two Free-Format Earnings Records are produced, but only the DWB orbit is established. If the reduced widow(er)'s benefit would be larger than the DIB, and the claim is not restricted to DIB (see RS 00207.330), develop the two claims simultaneously (see RS 00207.330) and forward them together in accordance with DI 11010.000 and DI 11015.000. Assemble the claims in separate folders with the disability material in the DIB file and staple the folders together. In Item 23 of the DIB SSA-831-U5, enter "Also filing as disabled widow(er) SSN 000-00-0000" and on the DWB SSA-831-U5: "Also filing for DIB SSN 000-00-0000." Prepare SSA-101-U3's for both claims.

Process as DOFA and, in the remarks portion of the routing form, instruct ODO to forward the claim to the appropriate PC once the claimant is in payment status. Should the claimant meet the disability requirement for DIB but not for widow(er)'s benefits, notify him or her of this fact on the DIB award notice.

If a claimant is filing for both DIB and widow(er)'s benefits and is also entitled to the LSDP, process the LSDP through CAPS while the disability decision is pending.

Where concurrent DIB-DWB claims are filed, follow the procedures in GN 00204.300ff.

00207.450 FO Action—Claimant Already Receiving DIB

If a DIB beneficiary wishes to file for DWB, the FO will take an SSA-10-BK and an SSA-3820-F6, and complete all necessary nondisability development. (See RS 00207.200 for necessary disability development.) Note in item 23 of the SSA-831-U5 "Widow(er) entitled to DIB - 000-00-0000." Do not prepare an SSA-101-U3 unless if the claimant is also entitled to the LSDP. Send the widow(er)'s application and supporting evidence with an SSA-101-U3 for the LSDP to the servicing PC. Note in item 11 on the SSA-101-U3 "Disabled widow(er)'s claim pending." Send SSA-3820-F6 with an SSA-831-U5, with item 23 properly cross-referred as indicated above, to ODO (see DI 11010.390, DI 11015.085 and DI 11020.075).

00207.460 Routing of DWB Claims

Procedure for routing DWB claims may be found in DI 11010.000 and DI 11015.000.

Send any claim for DWB filed by or on behalf of an individual physically residing outside the 50 States, District of Columbia, the U.S. Virgin Islands, Guam, American Samoa or Puerto Rico to INTPSC with an SSA-831-U5 (see DI 11010.410).

00207.470 Subsequent Action After Disability Determination

A. Disability Established

1. If the DWB filed in the month of the WE's death, alleged a disability onset date well before the prescribed waiting period for entitlement in the month of death, and the evidence does not establish a precise date but does establish disability before the beginning of the waiting period, the adjudicator should check the onset date on the SSA-831-U5. In such cases, the SSA-831-U5 often shows an onset date exactly 5 months before the WE's death and preceded by "at least by." Unless the WE died on the first day of the month, such an onset date does not permit payment for the month of death because the first month shown by the DDS cannot be counted as part of the waiting period (i.e., it is not shown to be a full month of disability). In this situation, if the evidence in file clearly indicates that an onset on the first day of the month established by the DDS is reasonable, the adjudicator will telephone the DDS to see if the onset date should be revised, and document the file in accordance with its response. Use this procedure only when it is necessary to prevent the loss of a month's benefit or the loss of a month's health insurance (HI) protection (see SM 00360.370 in CAPS cases, and SM 00385.445 for non-CAPS claims). Formal referral to the DDS for a revision of its determination of the date of onset will not be necessary. Make the appropriate entry in item 41 (remarks) of the SSA-831-U5. Changing the date of onset to any date in an earlier calendar month is not authorized by these instructions.
2. Forward the file to the servicing PC under cover of an SSA-3601 (non-CAPS Routing Form) or Form SSA-3293 (CAPS Routing) (see GN 01020.250 and SM 00310.030).

B. Award to Claimant While Disability Claim Pending

A claimant who is age 60 but under age 61 may file for reduced widow(er)'s benefits as well as additional

retroactive benefits for months prior to age 60 based on disability. If the claimant has attained age 60 at the time the claim is adjudicated or will attain age 60 within 3 months, award benefits beginning with the month of attainment of age 60.

If an approved disability determination is received, prepare an amended award to correct the MOET and benefit rate. Forward the file to the PC using Form SSA-3601 (Non-CAPS Routing Form). See GN 01020.250.

C. Claim Disallowed for Nonmedical Reasons

If the FO determines that the claimant is ineligible for DWB for nonmedical reasons, process the claim in accordance with DI 11010.340 and GN 03109.440.

D. Disability Denied

1. The DDS prepares and releases the denial notice in most initial title II disability claims (DIB, CDB, DWB). Beginning 1/75, most of these denied claims are sent to the FO for retention for 6 months. For retention procedures in non-State decisions (e.g., SGA and technical denials), see DI 11010.320 and DI 11055.035. For procedures regarding denied disability claims under title II, refer to GN 03109.005 ff.
2. If a denied claimant files a request for reconsideration on the disability issue, the request will be handled as prescribed in GN 03109.005-GN 03109.020.

(See SM 00310.010 ff. for DWB cases that can be processed through CAPS.)

3. If the claim involves the family maximum, prepare an SSA-101-U3 to correct the benefit rates of any beneficiaries whose benefits have been adjusted because of the widow(er)'s potential entitlement (see SM 00380.001 B.) Show the reason for the disallowance and forward to the PC using form SSA-3601 (Non-CAPS Routing Form).

E. Claimant Also Filed for DIB

If the claimant for DWB has also filed for DIB, ODO will cross-refer the folders and place a copy of the SSA-101-U3 (if the DIB was awarded) in the DWB's file.

00207.490 Conversion from Mother's or Father's to DWB

A mother's or father's benefit will be higher than a widow(er)'s benefit based on disability except in dual entitlement cases. If the widow(er) is also receiving HA benefits, a benefit comparison should be made to see if it would be advantageous for the disabled widow(er) to elect "W" benefits before his/her youngest child attains age 16. Therefore, a beneficiary of mother's or father's benefits should not file a claim for DWB until the youngest child in care is approaching age 16 (18 if entitled for 8/81—see RS 00202.026).

unless there are months in which a child is not in care (see RS 00208.060). However, a mother or father beneficiary can be deemed to be entitled to DWB for HI purposes only, so he or she may wish to establish eligibility to DWB solely for HI purposes (see RS 00207.495).

The SSA-1387-C1 is mailed approximately 6 months before the youngest child attains age 16 and includes a notice explaining benefits that widow(er)s who are disabled can be entitled to DWB. Encourage mother or father beneficiaries who allege disability to file early in the 6-month period preceding their youngest child's 16th birthday. A Form SSA-10-BK or SSA-1050-U5, proof of age and medical development are required as in any other case (see RS 00208.000 ff.).

When forwarding the claim for a disability determination, the DO will note "Mother's (or Father's) benefits will terminate (date)" in item 23 on the SSA-831-U5. Upon receipt of notice that disability has been established, the PC will prepare the widow(er)'s award effective with the first month for which the claimant is no longer entitled to mother's or father's benefits. (See RS 00207.495 for HI for DWB's). If disability is denied, the DDS will notify the claimant.

00207.495 HI for DWB's

A. General

The 1972 amendments extended HI coverage, both Part A, Hospital Benefits, and Part B, Medical Benefits, to disability beneficiaries, including DWB's. A claimant who has been entitled to DWB for 24 months and is currently entitled to DWB will be automatically entitled to HI beginning with the 25th MOET (but not before 7/73). In counting the 24-month period, certain months (in which a claimant was not actually entitled as a DWB) will be included if he or she can be deemed to have been entitled as a DWB for HI purposes only as explained below. Entitlement to SMI would begin effective the same month as HI, unless he or she declines the former. (See HI 00801.022 ff. for discussion.)

For HI purposes only, a claimant, although not actually entitled to DWB, will be deemed so entitled in each of the following situations:

1. Claimant entitled to mother's or father's benefits who applies for HI is deemed at that time to have filed for DWB (see B. below).
2. A claimant, between ages 62 and 65 entitled to RIB, who, in the month before he or she became so entitled, was entitled as a disabled widow(er) is deemed to continue to be so entitled (for HI purposes) for months of RIB entitlement prior to age 65.
3. A claimant entitled as an aged widow(er) whose benefits were changed from a disabled widow(er) to an aged widow(er) upon attaining the appropriate age is deemed entitled as a disabled widow(er) (for HI purposes) for months of aged widow(er)'s entitlement.
4. A claimant who became entitled to widow(er)'s benefits no earlier than the month in which he or she attained age 60, and who would, except for age, meet all other requirements for DWB, will be deemed (for HI purposes) to be entitled as a disabled widow(er) for months of aged widow(er)'s entitlement prior to age 65 as long as he or she remains disabled.

B. Mother or Father Beneficiary Deemed Entitled as a DWB

Prior to 5/83, only a mother beneficiary could be entitled to HI because she met the requirements to be deemed to be entitled as a DWB for HI purposes only. The Social Security Amendments of 1983 provided that a disabled father beneficiary could also be deemed to be entitled as a DWB for HI purposes only, but could not be entitled to HI until 5/83. Therefore, a father beneficiary who meets the requirements may be deemed to be entitled as a DWB for up to 24 months prior to 5/83, but his first MOET to HI can be no earlier than 5/83. See HI 00801.166 C. for futher discussion.

A disabled individual between ages 50-65 who is entitled to mother's (or father's effective 5/83) insurance benefits and who desires HI is deemed, for HI purposes only, to have filed as a disabled widow(er) upon furnishing proof of disability and meeting all other requirements for eligibility to DWB (follow RS 00207.400 ff.) He or she is deemed to have been entitled to these benefits, for HI purposes only, beginning with the first month for which he or she could have been entitled based on deemed filing as a disabled widow(er). A special provision applies for a woman who furnishes proof of her disability prior to 7/1/74; her application may be deemed to have been filed timely for DWB in the earliest month for which she met all eligibility requirements. (See RS 00208.300 D. for additional discussion.)

C. Reduced RIB Beneficiary Deemed Entitled as a DWB

An individual entitled to DWB may, if he or she is otherwise qualified, elect to receive a reduced RIB at any time between ages 62 and 65. For HI purposes only, a claimant who was entitled to DWB for the month before the first MOET to reduced RIB is deemed to continue to be entitled to benefits as a disabled widow(er). Accordingly, such a claimant may count months of disabled widow(er)'s entitlement and subsequent months of RIB entitlement prior to age 65 in order to meet the requirement of 24 months of entitlement as a disabled widow(er).

D. Aged Widow(er) Beneficiary Deemed Entitled as a DWB x-refer to HI 00801.166

A widow(er) over age 60 and under 65 may (for HI purposes) be deemed entitled to DWB if, except for age, he or she meets all other requirements for DWB and either:

1. He or she became entitled as a DWB prior to age 60, and benefits were changed to aged widow(er)'s benefits at the appropriate age; or
2. He or she was never awarded benefits as a disabled widow(er) based on the current claim because the first possible MOET to widow(er)'s benefits was no earlier than the month in which

he or she attained age 60.

Such aged widow(er)s will be considered to continue to be entitled to DWB for months of their entitlement prior to age 65, unless and until an event occurs which terminates their status as a DWB.

A claimant entitled to widow(er)'s benefits based on age, who becomes disabled before age 65, will be deemed for HI purposes to be entitled as a disabled widow(er) beginning with the first month after the waiting period.

E. Termination of HI Protection

Entitlement of a disabled widow(er) to HI ends with the month following the month in which notice is sent indicating that he or she is no longer entitled as a DWB. Therefore, even where evidence establishes that a terminating event (remarriage or cessation of disability) for disabled widow(er)'s occurred in an earlier month, the claimant's HI-SMI protection will not terminate until the end of the month following the month in which the notice of termination was mailed. If a claimant attains age 65 in the month immediately following the last month during which he or she is entitled to HI as a disabled widow(er), HI protection will continue for the claimant as a 65-year-old beneficiary. Although a disabled widow(er)'s entitlement to benefits may end before age 65 if he or she becomes entitled to a higher reduced RIB, for HI purposes, entitlement as a disabled widow(er) is deemed to continue as long as he or she remains under a disability (see C. above).

E00207.140 Widow(er)'s Benefits

Continued Entitlement of a Deemed Widow(er) Residing in the Second Circuit When the Legal Widow(er) is Entitled on the Same Earnings Record

A. Background

When a United States Court of Appeals issues a decision pertaining to a Social Security, Supplemental Security Income, or Black Lung claim which is in conflict with established SSA policy, SSA will "ACQUIESCE;" i.e., apply the circuit court law by issuing a Social Security Acquiescence Ruling (AR). These rulings provide a description of the case and an explanation of how SSA will apply the decision within the circuit.

Some Social Security acquiescence rulings stating circuit court law will apply within the appropriate circuit at all administrative levels of adjudication while others may be limited in application within the appropriate circuit to the Administrative Law Judge (ALJ) Hearing and the Appeals Council (AC) levels of adjudication. (Each ruling clearly states the adjudicative levels at which it is applicable.) No acquiescence ruling governing the adjudication of claims of New York residents will be applied solely at the ALJ and AC levels of adjudication unless the district court's injunction in Stieberger is modified or vacated. The Rosenberg/Capitano ruling which pertains to continued entitlement of a deemed widow(er) is one which applies at all levels of adjudication.

The instructions which follow advise initial and reconsideration level adjudicators how to handle claims which may be affected by this ruling.

In the case of Rosenberg v. Richardson, 538 F.2d 487 (2nd Cir. 1976) and reaffirmed by Capitano v. Secretary, 732 F.2d 1066 (2d Cir. 1984) the court ruled that the provision of Section 216(h)(1)(B) of the Social Security Act which requires terminating the benefits of a deemed widow(er) if a legal widow(er) becomes entitled applies only when the legal widow(er) could receive the full widow(er)'s benefit. Under those decisions, a deemed widow(er) will be paid the difference between the full widow(er)'s benefit (after reduction for age but before the reduction for a benefit based on his/her own earnings) and the widow(er)'s benefit actually payable to the legal widow(er) after subtracting the legal widow(er)'s own RIB/DIB. This decision is incorporated into a Social Security Administration Acquiescence Ruling number AR 86-2(2) and applies at all adjudicative levels within the Second Circuit (Connecticut, New York and Vermont).

Where this ruling does not apply, the benefits of a deemed widow(er) will be terminated with the month before the month that the authorizer approves the award of the legal widow(er).

B. Scope of Application

These procedures apply in the Second Circuit to any entitled deemed widow(er) residing:

1. In the States of Connecticut, New York or Vermont at the time the determination is made on the legal widow(er)'s claim for widow(er)'s benefits; or

2. In any other State at the time the legal widow(er) files a claim and the deemed widow(er) becomes a resident of Connecticut, New York or Vermont before a final decision is reached on the legal widow(er)'s claim;

AND

a. The legal widow(er)'s claim for benefits is filed on or after January 23, 1986; or

b. The legal widow(er)'s claim for benefits was filed before January 23, 1986 and appeal rights were not exhausted before January 23, 1986.

C. Determining the Amount of the Deemed Widow's Benefit

Step 1: If this is an initial claim, and the deemed widow(er) can be entitled for a month before the legal widow(er) is entitled, compute the deemed widow(er)'s rate reduced for age or, if the deemed widow(er) is currently entitled, use the latest benefit rate shown on the MBR. EXCEPTION: If the legal widow has entitled children, refigure the deemed widow(er)'s benefit based on the family maximum before continuing to Steps 2. and 3.

Step 2. Compute the legal widow(er)'s benefit rate and determine the amount the legal widow(er) will be paid on the deceased wage earner's (DWE) record.

Step 3. Subtract the Step 2 amount from that in Step 1. This is the revised widow(er)'s rate.

EXAMPLE:

The legal widow is receiving a RIB of $400 on her own earnings record. She is entitled to a full D benefit of $530.

The deemed widow is entitled to $500 reduced for age.

Step 1:	500.00	Deemed Widow Reduced for Age
Step 2:	130.00	Amount Payable to Legal Widow on DWE's Account
Step 3:	370.00	Revised Deemed Widow(er)'s Rate

D. Field Office (FO) Processing Instructions

The purpose of these instructions is to effectuate the Rosenberg/Capitano Acquiescence Ruling. Therefore, whenever a claimant files for a benefit (retirement insurance benefit (RIB) or disability insurance benefit (DIB)) on his/her own earnings record, that claim will be handled under current dual entitlement

instructions so that the benefits based on the claimant's own earnings are not delayed.

Process the claims for benefits on the DWE's earnings record as follows:

1. If a claimant files for DIB/RIB benefits and it appears he/she will be entitled, but also files for widow(er)'s benefits on the DWE's record; or

2. If a claimant already entitled to DIB/RIB files for widow(er)'s benefits on the DWE's record; THEN

3. REQUEST AN MBR ON THE DWE'S RECORD.

If the MBR shows no other individual is receiving benefits as a widow(er), process the widow(er)'s claim in accordance with current dual entitlement instructions.

If the MBR shows a widow(er) is currently entitled to benefits, forward the widow(er)'s unadjudicated claim, the relationship development and a copy of the claimant's own RIB/DIB to the servicing PC. This is because, in most cases, the FO will not be able to make a final determination without the development in the existing PC folder.

When the FO is processing both the deemed and legal widow(er)'s claim concurrently, the FO should undertake all the necessary development, (including GN 00305.000 ff.) make the relationship determination and completely adjudicate the claims. These claims will be treated as adverse adjustments as indicated in GN 01010.140 ff. This will include a disallowance where appropriate. ~~Forward the folders to the servicing PC, non-DOPA code RV-19.~~ TN 10

Because benefits to the deemed widow(er) are being adjusted, the deemed widow(er) will be shown on the SSA-101-U3 entitling the legal widow(er). Show all applicable remarks in item 11 as listed in SM 00385.605 A. and B. Also, show the remark "Rosenberg Acquiescence Ruling."

E. PC Processing Instructions

Claims Authorizer (CA)

List all cases adjudicated using these procedures under listing code "534 Rosenberg Acquiescence Ruling."

When you receive an unadjudicated claim, review the existing claims folder and, if necessary, develop any unresolved issues including marital relationship following the guidelines in GN 00305.000 ff. Completely adjudicate the claim. See adverse claims instructions in GN 01010.140 ff.

When you receive a conditionally or completely adjudicated claim,

review the determination, and process under current non-DOFA instructions, applying the benefit rate formula in this instruction.

After you complete your actions, forward the claim(s) to the benefit authorizer (BA) to summarize the award(s) and, where necessary, adjust the deemed widow(er)'s rate.

See RS E00207.140 D. above for remarks to show on the SSA-101-U3.

F. PC Processing Instructions--Benefit Authorizer (BA)

When you receive the claim(s), summarize the legal widow(er)'s and the deemed widow(er)'s award where necessary. If the deemed widow(er) is currently entitled, take the necessary adjustment to the deemed widow's rate as instructed on the SSA-101-U3.

In addition:

1. If the deemed widow(er) is currently entitled and a current entitlement code (CEC) of D (de facto spouse) is not already present on the MBR, annotate this code via MISCOR form SSA-3621. Annotation of the CEC of D would normally have been accomplished via the input of a relationship type of DF in RID 4 of the SSA-101-U3 when the award was processed.

2. Flag the legal widow(er)'s A and D (or W) folders "2nd Circuit Rosenberg Acquiescence Case--Any change in the benefit rate of the legal widow(er) requires an adjustment to the deemed widow(er)'s rate." and annotate the related claim number. This flag will alert the BA to consider and adjust where necessary the rate of the deemed spouse whenever the A or D (or W) rate of the legal widow is adjusted on subsequent actions.

G. NOTICES

1. Adverse Adjustment Notice

When a legal widow(er) files a claim that will require an adverse adjustment in the benefits of the deemed widow(er), follow the procedures for handling adverse adjustments (GN 01010.140).

2. Adjustment Notices

When the deemed widow(er)'s benefit is reduced to zero, request a MADCAP category D notice (CN 00720.510). Use the following language for the reason for suspension:

> "This is because another person is now entitled to the benefits you were receiving. If you are due payments later, we will tell you then."

In all other cases, request a MADCAP category A notice (CN 00720.420) and MADCAP paragraph A39.

H. Disability Claim of Legal Widow(er) Pending

When the legal widow(er) files concurrently for DIB and widow(er)'s benefits and is determined to meet all requirements for entitlement to the widow(er)'s benefit, suspend rather than terminate the deemed widow(er)'s benefits pending the receipt of the legal widow(er)'s disablity determination.

If the disability claim is denied, terminate the deemed widow(er)'s benefits effective with the month before the month the legal widow(er)'s award on the DWE's record was approved. If the disability claim is approved, reinstate the deemed widow(er)'s benefits, computing the benefit rate as described above.

I. Suspension and Termination Events

1. Benefits paid because of this ruling will not be terminated simply because the deemed widow is no longer a resident of the Second Circuit.

2. A deemed widow(er)'s benefit under this ruling terminates the month before the month any of the events listed in RS 00207.130 occur.

3. All suspension events and the nonpayment provisions listed in RS 00207.120 apply to the deemed widow(er)'s receipt of beneits under this ruling.

E00207.150 Entitlement of a Deemed Widow(er), Wife or Husband Residing in the Fifth and Eleventh Circuits When the Legal Widow(er) was Entitled on the Same Earnings Record But is no Longer Entitled to Benefits

A. Background on Acquiescence Rulings

When a United States Court of Appeals issues a decision pertaining to a Social Security, Supplemental Security Income, or Black Lung claim which is in conflict with established SSA policy, SSA will "ACQUIESCE;" i.e., apply the circuit court law by issuing a Social Security Acquiescence Ruling (AR). These Rulings provide a description of the case and an explanation of how SSA will apply the decision within the circuit.

Some Social Security ARs stating circuit court law will apply within the appropriate circuit at all administrative levels of adjudication while others may be limited in application within the appropriate circuit to the administrative law judge (ALJ) hearing and the Appeals Council (AC) levels of adjudication. (Each ruling clearly states the adjudicative levels at which it is applicable.) The Woodson Ruling which pertains to interpretation of the deemed marriage provision applies to determinations or decisions at all administrative levels (i.e., initial, reconsideration, ALJ hearing and AC) in both the Fifth and Eleventh Circuits.

The following instructions advise initial and reconsideration level adjudicators how to handle claims involving deemed spouse/widow(er) claimants whose entitlement depends upon termination of the legal widow(er)'s benefits.

B. History of the Woodson Case

The Court of Appeals in Woodson held that a legal widow's prior period of entitlement to mother's benefits did not preclude a deemed widow, under Section 216(h)(1), from qualifying for widow's benefits. This decision is incorporated into AR 86-18(5) and AR 86-19(11) which apply at all adjudicative levels in the Fifth Circuit and Eleventh Circuit.

C. Scope of Ruling

This ruling applies only in cases where the applicant seeking to invoke the deemed marriage provision resides in Alabama, Florida or Georgia (Eleventh Circuit) or in Texas, Louisiana or Mississippi (Fifth Circuit) at the time of the determination or decision at any administrative level of review regardless of the actual month of entitlement. The ruling applies to determinations or decisions made on or after May 22, 1986.

D. FO Processing Instructions

When a claimant seeks to establish her status as the wife or widow of a worker on the basis of the deemed marriage provision and the legal widow was previously entitled, the claimant's entitlement will not be barred because the legal widow was previously entitled to wife's, widow's or mother's benefits under section 202(b), (e) or (g) of the Act. This ruling applies equally to claims for husband's, widower's and father's benefits. In such cases, adjudicate the claim of the deemed spouse as though the legal spouse had not been entitled, except that the "deemed spouse" will not be entitled to wife's, widow's or mother's benefits for any months prior to the month in which the former beneficiary's benefits terminated.

1. Initial Claims

Process these claims in the usual manner. Complete the necessary application and develop all entitlement factors. The date of entitlement will be the latest of the following:

a. the month the legal widow's benefits were terminated; or,

b. the month of entitlement based on the usual application rules.

Forward the claim to the PC using the appropriate routing form, SSA-3293 or SSA-3601. When processing a NON-CAPS claim, annotate the routing form "Woodson Acquiescence Ruling, list case under listing code 573."

2. Reentitlement

Follow the above procedures. Use DOTEL procedures in GN 01070.200 ff. to verify any entitlement factor which was established in the prior claim.

E. PC Processing Instructions

When you receive an unadjudicated claim, develop all unresolved issues, including marital relationship. If the marital relationship is established and all other factors of entitlement are met, completely adjudicate the claim. See adverse claims instructions in GN 01010.140 ff. where other beneficiaries are currently entitled.

F. Suspension, Termination, Nonpayment, and Deduction Events

Once the applicant has become entitled to benefits under the deemed marriage provisions by application of this ruling, determine his/her continuing entitlement in accordance with regular SSA policies and procedures.

1. Benefits paid as a result of this ruling will not be terminated simply because the claimant no longer resides in the Fifth or Eleventh Circuit.

2. If the legal spouse/widow(er) becomes re-entitled, the deemed spouse/widow(er)'s benefits will terminate the month the legal spouse/widow(er)'s award is approved.

3. All other suspension, termination, and deduction events in RS 00202.000 ff., RS 00207.000 ff. and RS 00208.000 ff. apply.

T00207.000 Widow(er's) Benefits

Background, Definition and Policy Principle.....T00207.001

Operating Procedures.....T00207.002

Language for the Pirus Award Notice - Example.....T00207.003

PC Reporting.....T00207.004

Citation: Pirus v. Bowen, No. 87-1141-IH (C.D. Cal. Nov. 19, 1987) United States District Court Central District of California. Sidell T. Pirus, et. al. v. Otis R. Bowen, Secretary DHHS

T00207.001 Background, Definition and Policy Principle

A. Background

1. AMENDMENTS

Section(s) 131 and 301 of the Amendments of 1983 (P.L. 98-21) amended sections 202(e) and (f) of the Social Security Act (the Act) to permit the Social Security Administration (SSA) to disregard remarriages of certain surviving divorced spouses.

2. INTERPRETATION

Until the Pirus decision, SSA did not disregard a remarriage of a surviving divorced spouse after age 60 if the remarriage occurred prior to the death of the number holder.

3. PIRUS V. BOWEN

The divorced spouse in Pirus v. Bowen remarried after attaining age 60 but before the number holder died. When he died, she filed for surviving divorced spouse's benefits.

She was denied because she was not the surviving divorced spouse at the time she married her second husband. She filed again when her second husband died. She was awarded benefits beginning the month her second husband died and she met the "is not married" requirement.

She subsequently filed a court suit receive payment prior to the second husband's death. The court certified a class and in an order issued November 19, 1987 awarded additional benefits to the plaintiff and all class members.

A. Background

3. PIRUS V. BOWEN (Continued)

SSA will not appeal the decision and will effectuate the order by:

- o paying the named plaintiff; and,
- o identifying and paying members of the court certified class defined in B. below.

B. Definition - Pirus Class

The The Pirus court certified a nationwide class consisting of all persons:

- o who have applied for or will apply for benefits under Title II of the Act as the surviving divorced spouse of an individual covered under the Act;
- o who did or will remarry at age 60 or thereafter;
- o whose former spouses died after the survivor's remarriages;
- o and who will be denied survivor's benefits because of remarriages occurring prior to the death's of their former spouses, or who were initially denied survivor's benefits on or after 3/31/85 because the remarriage occurred prior to the deaths of their former spouses.

C. Policy Principle

Generally, an applicant for surviving divorced spouse's benefits or disabled surviving divorced spouse's benefits must be unmarried in order to be entitled. However, under the following conditions the remarriage may be disregarded (i.e., deemed not to exist):

- o the remarriage occured after attainment of age 60; or
- o the remarriage occured after age 50, and the claimant was disabled at the time of the remarriage.

T00207.002 Operating Procedures

A. Background

1. ORSI TELETYPE

ORSI teletype 88-103 was released 2/23/88 to:

a. alert all field offices (FO's) to the need to effectuate the Pirus court order.

b. announce new listing code 504, Pirus Court Case.

2. IDENTIFICATION OF CASES

a. The Office of Systems prepared a listing for each Program Service Center (PSC). The listing identifies each potential Pirus class member by:

- o SSN of the deceased NH.
- o name of the claimant

b. Potential Pirus class members were identified by using the following:

- o denial codes 31, 64 and 65 for the period 3/31/85 to 2/22/88.
- o BICS - D6 - DY, DC - DZ, W6 - WJ, and WR - WT

B. Procedure - PSC

1. GENERAL

a. Key-in information on Central Office prepared listing to produce the Form SSA-1056-C1 giving the folder location.

b. Retrieve Federal Record Center (FRC) cases as soon as possible.

c. Give available folders to claims authorizers (CA) to determine status of the potential class member according to the guidelines in RS T00207.001 B.

2. NOT A CLASS MEMBER

a. If the review determines the individual is not a class member, the CA will record:

- o name
- o SSN
- o reason requirement not met.

b. Return the folder to files or FRC. See RS T00207.004 below for reporting.

3. CLASS MEMBER - NO PREVIOUS OR NO CURRENT ENTITLEMENT TO BENEFITS

It is not necessary to obtain a new application. Using the original application take the following actions in the most expeditious manner.

a. Request the FO to:

- o Verify the claimant's address.
- o Develop entitlement without regard to the claimant's remarriage.
- o Develop termination suspension and deduction events over the claimant's signature for the entitlement period.

CAUTION: Entitlement cannot be prior to 1/1/84 for this class of beneficiary.

b. When the PC receives the development from the FO, the CA will:

- o Prepare an initial award based on the original application to entitle the claimant to retroactive benefits
- o Place the claimant in current pay status if appropriate
- o Prepare Form SSA-5015-U2 listing the case under listing code 504, Pirus court case.

B. Procedure

3. CLASS MEMBER - NO PREVIOUS OR NO CURRENT ENTITLEMENT TO BENEFITS (continued)

- o Include the language in RS T00207.003 below in the award notice.

c. See RS T00207.004 for reporting instructions.

4. CLASS MEMBER - CURRENTLY ENTITLED TO BENEFITS

If the CA review determines that the individual is a member of the Pirus class and is currently entitled to benefits, the CA will:

a. Request the FO to develop termination, suspension and deduction events over the claimants signature for the retroactive entitlement period.

CAUTION: Entitlement cannot be prior to 1/1/84 for this class of beneficiary.

b. When the PC receives the development from the FO the CA will:

- o Prepare an amended award for the retroactive entitlement period.
- o Prepare Form SSA-5015-U2 listing the case under code 504 Pirus Court Case.
- o Use the language in RS T00207.003 for the amended award notice.

c. See RS T00207.004 for reporting instructions.

5. CLASS MEMBER - DECEASED

a. Develop the information requested in B3 above.

b. Prepare the necessary award to dispose of the underpayment. See GN 02301.001ff.

c. See RS T00207.004 for reporting instructions.

C. Procedure-FO

1. DEVELOPMENT REQUEST RECEIVED

a. When a development request is received, contact the claimant as soon as possible to develop as required above in B3.

b. Advise the claimant about the possibility of retroactive payments from the date claim filed or 1/1/84, whichever is later.

c. Complete the development and forward to the PSC.

2. CURRENT CLAIM PENDING

a. Adjudicate the claim without regard to the claimants' remarriage after age 60 (age 50 if disabled).

b. Send standard language award notice.

c. Prepare Form SSA-5015 U2 listing the case under code 504 Pirus Court Case.

T00207.003 Language for the Pirus Award Notice - Examples

We are writing to tell you that __1__ entitled to benefits beginning __2__ as the surviving divorced __3__ of __4__. When __5__ applied on __6__, we told __7__ that we would not pay __7__ because __8__ remarried before __9__ death. However, the U.S. District Court, in Pirus v. Bowen, recently decided that divorced husbands and wives who remarry before the death of a worker can be entitled to benefits.

Fill-ins:

1. a. you are
   b. full name of beneficiary is

2. a. Month of entitlement in format December 1987

3. a. wife
   b. husband

4. Full name of deceased insured

5. a. you
   b. title, surname of beneficiary in format, Mr. or Ms.

6. Date of original application for surviving spouse benefits

7. a. you
   b. her
   c. him

8. a. you
   b. she
   c. he

9. Full name of deceased insured (possessive case)

T00207.004 PC Reporting

A. Background

SSA may be required to furnish the Court either:

- o a progress report on steps taken to implement the Pirus decision, or
- o a full accounting of numbers of beneficiaries, amounts paid and the period for which paid; and
- o a periodic progress report(s) on any of the above.

B. Procedure - PC

Maintain statistics on the cases implemented in accordance with the Pirus decision. List the claims in SSN order and provide:

- o SSN of deceased number holder
- o Name of claimant
- o Class member, yes or no. If no reason requirement not met.
- o Periods for which paid and amounts
- o If the class members is deceased, also include the disposition of the underpayment.

Mail the report biweekly to the following address:

Regional Operations Support Staff
4-F-24 Operations Building
6401 Security Blvd.
Baltimore, MD. 21235

•U.S.GOVERNMENT PRINTING OFFICE:1989-241-323:80868